BRIEF IN SUPPORT OF PETITION

ARGUMENT

1.

Section 501[1] Should Be Construed in Accord with Article 3, Regulations 79 (1936 ed.) Not To Tax the Donor's Surrender of His Reserved Power.

In *Rasquin v. Humphreys*, 308 U. S. 54, this Court withheld its decision as to the validity of Article 3, Regulations 79 (1936 ed.) as applied prospectively. If that Article is a valid interpretation of the gift tax law, the donor made no taxable gift by the surrender of his reserved power, a complete gift having occurred at the time the trust was created. The generality of Section 501(a), imposing a tax "upon the transfer * * * of property by gift", without defining the taxable event as either (a) the giving up by the donor of all beneficial interest or (b) the unconditional vesting of beneficial interest in the donee, required administrative interpretation. Either event could reasonably have been within the intent of the law. By the 1936 regulation the Commissioner interpreted the Act as imposing tax on the donor's giving up of all beneficial interest.

That regulation was adopted in February, 1936. Thereafter Congress enacted the Revenue Acts of 1936, 1937, 1938

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[1] All statutory references in this brief are to the Revenue Act of 1932 unless otherwise indicated.

and 1939, but in none of those acts did Congress attempt to change the interpretation embodied in the 1936 regulation. To that extent Congress inferentially approved such interpretation.

On February 25, 1944, Congress passed, over Presidential veto, the Revenue Act of 1943, containing Section 502 by which the surrender of a grantor's reserved power to change beneficiaries without making himself a beneficiary is not deemed a taxable event if effected in the years 1939 to 1944, inclusive. This was a relief measure, to relieve grantors from the hardship of the decision of this Court in *Sanford's Estate v. Commissioner*, 308 U. S. 37 and *Rasquin v. Humphreys*, 308 U. S. 54. Inferentially Congress again approved the interpretation embodied in the 1936 regulation.

There is no equitable basis for restricting relief to surrenders made in the years 1939-1944. Congress must have assumed that the 1936 regulation was being applied to all transactions occurring after its adoption in February, 1936, through the years 1937 and 1938, and that relief was not needed as to such prior years.

Here the donor surrendered his reserved power in July, 1936, acting in express reliance on the 1936 regulation. Relief having now been given to other donors even less equitably entitled to relief, it is most unfair and unjust that tax should be imposed on the instant transaction. Every consideration underlying the just administration of the tax laws requires that the regulation in effect when the donor surrendered his reserved power be applied to determine his gift tax liability.

The Commissioner is authorized by Section 3791(b) of the Internal Revenue Code to give relief in this situation

and he has recently given relief in a case exactly parallel. To avoid the hardship resulting from this Court's decision in *Helvering v. R. Douglas Stuart,* 317 U. S. 154, the Commissioner issued I. T. 3609, leaving in effect the prior regulation which this Court's decision had nullified and giving only prospective effect to that decision. In the same manner, non-discriminatory administration of the gift tax law requires that the Commissioner determine the donor's liability in this case by applying the regulation in effect when the donor surrendered his reserved power.

2.

Contingent Beneficiaries in Expectancy Do Not Incur Personal Liability as Donees Under Section 510.

Petitioner's liability as trustee of a transferee arises only if the beneficiaries of the instant trust are deemed to be donees on whom personal liability for gift tax is imposed by Section 510.

Section 510 imposes gift tax liability on a donee "to the extent of the value of such gift". The statutory words make clear the underlying principle of that liability, viz., that a donee is personally liable only to the extent that he has received something out of which he may pay the tax. Here the trust beneficiaries are contingent beneficiaries in expectancy of a spendthrift trust. They will receive something of value only if they are living when the donor dies. Until then they will receive nothing from the trust and can realize on nothing in the trust from which to pay any gift tax liability.

To place personal liability on such beneficiaries who have received nothing and may never receive anything conflicts squarely with the due process clause of the Fifth

Amendment. Any such imposition would be fraught with the same basic evil of taxing one person on the property or income of another which was condemned by this Court in *Hoeper v. Tax Commission of Wisconsin*, 284 U. S. 206. Such unconstitutionality was pointed out by Mellott, J., in his dissenting opinion in the case of *Evelyn N. Moore*, 1 T. C. 14, 19.

No provision under any of the federal tax laws places liability for the tax of another person on anyone who has not in fact received property of the other person from which to pay the liability of such other person. A departure from that basic equitable and constitutional principle should not be found in the gift tax law except upon a most positive and compelling statutory provision, which the gift tax law does not contain. By the words "to the extent of the value of such gift," Section 510 conditions the donee's liability on the receipt by the donee of property or value from which the gift tax liability may be paid.

To uphold liability on petitioner is necessarily a decision that the donor's gift tax liability could have been collected by respondent from the contingent beneficiaries in expectancy of the instant spendthrift trust. That decision raises a serious constitutional question. It is significant that the Commissioner has not in this case, or in any other case to our knowledge, attempted to enforce personal liability against such beneficiaries. We submit that such beneficiaries cannot constitutionally be burdened with such liability and by the plain language of the gift tax law are not so burdened. There is therefore no statutory basis for imposing liability on petitioner as a fiduciary of a transferee, because there is no liability of the trust beneficiaries to be imposed against petitioner as their trustee.

3.

No Deficiency Notice Having Been Given to the Donor, Assessment Against Petitioner is Prohibited by Section 513(a).

Section 513(a) authorizes the Commissioner to send a notice of gift tax deficiency to the donor and in absolute language prohibits assessment and collection of the tax until such notice has been sent. That section further enumerates the specific exceptions to the requirement of notice to the donor and to the prohibition against assessment and collection until such notice has been given. Significantly absent from the enumerated exceptions is the liability of donee-transferees and fiduciaries of transferors and transferees.

Collection of the gift tax is made by summary procedure, as is collection of the income and estate tax. Except for the subsequent administrative and judicial review afforded the taxpayer, that procedure would be lacking in due process of law under the Fifth Amendment. See *Phillips v. Commissioner,* 283 U. S. 398. Even in the summary procedure, due process requires that the taxpayer be given notice and opportunity to be heard. Section 513(a) merely complies wtih that due process requirement.

Notice to the donor is essential because it is his tax which is being determined. His gift tax liability is placed on a cumulative basis, the liability of each year being dependent upon the amount of gifts made in prior years. Therefore, in the determination of his gift tax liability for any year, even though it be for a prior year against which assessment is barred, he is entiled to notice and an opportunity to be heard. Section 513(a) properly guarantees

that constitutional protection to the donor which has been violated in this case.

Section 513(a) expresses the obvious legislative intent to require the Commissioner first to assert liability against the donor before pursuing donees or transferees, and thereby to make regular and orderly the collection of the gift tax. Here the Commissioner has taken no step to collect from a solvent donor.

Without the requirement of notice to the donor contained in Section 513(a) the Commissioner would not be required by the law to give preliminary notice to anyone before proceeding with assessment and collection. There is no other notice requirement placed on the Commissioner in the entire gift tax law. Notice to the donor is therefore a prime requisite to the assessment and collection of the gift tax, except in those instances specifically enumerated in Section 513(a), in which adequate reason exists for excusing the notice requirement. Here there is no reason for excusing from the notice requirement, the donor being able at all times to respond to any tax liability found against him, and the statute makes no exception in this kind of case. The soundly grounded prohibition of Section 513(a) against assessment and collection without prior notice to the donor, therefore, precludes collection from petitioner.

4.

The Donee Liability Here Imposed Against Petitioner as Trustee of a Transferee is Barred by the Three-Year Limitation Period Under Section 517(a).

Throughout the gift tax law is the significant use of the expression "the tax imposed by this title." Section 501

provides that "a tax * * * shall be imposed on the transfer * * * of property by gift." That is the "tax imposed by this title." By Section 509 the "tax imposed by this title" is made payable by the donor. By Section 510 the donee is made personally liable for the "tax imposed by this title." Section 517(a) then states that the "taxes imposed by this title" shall be assessed within three years after the donor's return was filed.

The liability of a donee for the "tax imposed by this title" falls squarely within the language of Section 517(a) and must be assessed within the three-year period. It is the donee's alleged liability (which in point 3 of this brief we have shown does not here exist) for the "tax imposed by this title" which the Court below upheld against petitioner by resort to the transferee provisions of Section 526. As is pointed out in point 5 of this brief, the same discriminate use of the statutory words "the tax imposed by this title" appears in Section 526 and conclusively demonstrates the fallacy of resort to that section for upholding the assertion of liability against petitioner.

Section 517(a) imposes an absolute bar against the untimely assessment of the alleged donee's liability. This was aply pointed out by Mellott, J., in his dissenting opinion in the *Evelyn N. Moore* case, 1 T. C. 14, 18, in which he said:

> "If the action were to hold her upon an alleged liability as a donee under section 510, set out in the opinion of the majority, the statute of limitations could be successfully interposed as a defense; for the liability of a donee is 'imposed by Title III,' the same as the liability of a donor."

5.

Statutory Liability of a Donee for "Tax Imposed by This Title" is Not Assessable Under Section 526.

Section 526 relates to the enforcement of the liability of transferees. Section 526(a) provides in substance that "the following liabilities," viz., "the liability, at law or in equity, of a transferee" or "the liability of a fiduciary under section 3467 of the Revised Statutes," may be assessed and collected in the same manner and subject to the same provisions and limitations as in the case of a deficiency in the "tax imposed by this title." By its express language, therefore, Section 526(a) contrasts the "liability, at law or in equity, of a transferee" with statutory liability for the "tax imposed by this title." It clearly differentiates between the two kinds of liability and plainly shows the legislative intent not to include the statutory liability of a donee for the "tax imposed by this title" within the category of "liability, at law or in equity, of a transferee" enforceable under the transferee provisions of Section 526.

This careful differentiation in the statutory language is not merely accidental or purely technical. It accords with logic and good sense and with the prior practice and adjudications under the related transferee provisions of the income and estate tax laws. The gift tax provisions of Section 526 were taken from the estate tax transferee provisions of Section 316 of the Revenue Act of 1926 and the income tax transferee provisions of Section 280 of the Revenue Act of 1926. The transferee provisions of the estate and income tax law were new to the 1926 Act. In the Senate Finance Committee report on the Revenue Act of 1926 it was stated that the provisions relating to trans-

ferred assets were not intended "to define or change existing liabilities," but that if the liability of a transferee exists "under other law," then that liability is to be enforced according to the summary procedure. (See *Wire Wheel Corp.,* 16 B. T. A. 737, 742.)

Every decision under the income and estate tax laws has held that "liability, at law or in equity, of a transferee" for income or estate taxes is limited to that liability which any transferee of property incurs where the transferee by contract assumed the liabilities of the transferor, or where the transferor was insolvent at the time of the transfer or was rendered insolvent by the transfer, or where the transfer was fraudulently made to hinder, delay or defraud the grantor's creditors. No such basis for transferee liability exists in this case.

In carefully differentiating between the "liability, at law or in equity, of a transferee," and statutory liability for the "tax imposed by this title," Section 526(a) adopts the usual and accepted concept of transferee liability as worked out under the income and estate tax laws, to which reference is above made, as the kind of "liability, at law or in equity, of a transferee" which may be enforced under Section 526 of the gift tax law.

To apply Section 526 to the statutory liability of a donee under Section 510, requires that the statutory language distinguishing between statutory liability for the tax and transferee liability at law or in equity be ignored and that the usual and accepted concept of transferee liability at law or in equity be enlarged to include statutory liability.

The purpose thereby to be accomplished is to achieve the additional year for assessing statutory donee liability.

No persuasive reason can be given for ignoring the statutory language and enlarging the accepted concept of liability at law or in equity to accomplish that result. Section 517(a) in words requires the "taxes imposed by this title" to be assessed within three years, and Congress plainly meant that the Commissioner should assess the statutory liability for such taxes within the three-year period, and not to provide a four-year period for assessing such statutory liability. The filing of the donor's return initiates the liabilities of both donor and donee, the liability of the donor becoming due on the due date of the return and the liability of the donee arising immediately thereafter if the tax is not paid by the donor. No reason can be assigned for providing different periods of limitation for the assessment of such co-existing and simultaneous liabilities. If Congress had intended to give the Commissioner four years for proceeding against the donee it could easily have done so. In the language of Mellott, J., in his dissenting opinion in the *Evelyn N. Moore* case, 1 T. C. 14, 19, "It would not have adopted the circuitous method of creating a personal obligation for the tax, providing for a three-year period in which it is to be assessed, and then, merely by 'including' a donee within the definition of a transferee, expect that the transferee section should be construed as if it provided for the assessment of a liability against the recipient of the property even though he had not assumed the tax and thereby become liable at law and even though no circumstances are shown which would make him liable in equity."

Further, the provision of Section 526(f) defining "transferee" as including "donee" is to be construed, in any event, to refer to the kind of donee who may legally be made liable for the donor's tax, viz., a donee who has received something from which he may pay the tax. Here

the contingent beneficiaries in expectancy of a spendthrift trust are not that kind of donee and are not within the purview of Section 526(f) any more than they are subject to the statutory donee liability imposed by Section 510. Such contingent beneficiaries are no more transferees than is any heir, legatee or devisee who is entitled to receive but has not yet received his share from the estate of his deceased benefactor.

6.

Section 527(b) is Not Applicable Because the Required Notice to Make Section 527(b) Operative Was Not Given.

Under Section 527(b) the obligation of a fiduciary of a transferee to assume all of the powers, rights, duties and privileges of such transferee arises only "upon notice to the Commissioner" given in accordance with the regulations prescribed by the Commissioner in Article 61, Regulations 79 (1936 ed.).

Article 61 requires that the notice shall (1) be in writing, signed by the fiduciary, (2) be filed with the Commissioner, (3) state the name and address of the person for whom the fiduciary is acting, (4) state the nature of the liability involved, whether for the tax, and, if so, the years involved, or a liability at law or in equity of a transferee, or the liability of a fiduciary for the donor, and (5) be accompanied with satisfactory evidence of the authority of the fiduciary to act for the transferee or donor.

Petitioner gave no such notice to the Commissioner. The Tax Court held that equivalent notice was given to the Commissioner by the donor's "Gift Tax Return" and by the "Donee's or Trustee's Information Return of Gifts"

which were filed with the Collector of Internal Revenue at Indianapolis, and the Court below deemed the donee's "Information Return" to be sufficient notice to make Section 527 operative. Clearly the donor's Return was not the notice prescribed under Section 527. The donee's "Information Return," Treasury Department Form 710, is prescribed by Article 21 of Regulations 79 (1936 ed.).

The donee's "Information Return" is a "return," not a "notice." Its form and content are entirely different from the prescribed form and content of a "notice" under Section 527. Such Return may be filed by either the donee or trustee, and if filed by the donee need not be filed by the trustee. The Return may be filed either with the Collector or with the Commissioner. The information called for by the Return has little or no relevance to the matter of transferee liability or the liability of a fiduciary for a transferee. Most significant, the donee's "Information Return" is stated by Article 21 to be "for information purposes only."

The Court below has held that such donee's Return, filed "for information purposes only," as required by unrelated Article 21, is effective to burden petitioner with all of the powers, rights, duties and privileges of a transferee under Section 527 and Article 61. This ignores the obvious intent and meaning of the statute, that the assumption of the duties of a transferee shall be voluntary on the part of the fiduciary. The condition "upon notice to the Commissioner" to be given in accord with the Commissioner's regulations, the use of the word "assume," and the exacting requirements made by Article 61 as to the contents of the notice, plainly contemplate voluntary action by the fiduciary. The giving of the required notice is a crucial

event which initiates burdensome obligations and is therefore far different from the donee's Return filed "for information purposes only."

The incongruity and unfairness of holding that such Return is equivalent to the specified notice of fiduciary relationship is particularly emphasized in this case because of the existence of the 1936 regulation, Article 3, which stated that the donor's surrender of his reserved power is not a taxable gift. The decision of the Court below holds that by the filing of the donee's Information Return "for information purposes only" peitioner assumed all of the onerous duties of a transferee in respect to a transaction which the Commissioner's regulations stated was not a taxable event.

The decision below contravenes the decision of this Court in *Commissioner v. Lane-Wells Co.*, 64 S. Ct. 511, decided February 14, 1944. That case involved income tax liability under the Revenue Acts of 1934 and 1936 of a corporation with respect to the additional tax imposed upon personal holding companies by Title IA of the Revenue Acts. The corporation believed in good faith that it was not a personal holding company and filed only a corporate form of tax return, Form 1120, as required by statute and regulation for determining the regular corporate income tax imposed by Title I of the Revenue Acts, and did not file a separate return on Form 1120H in respect to liability for the additional tax imposed by Title IA of the Revenue Acts on personal holding companies. Form 1120H was not required by the Act but was prescribed by Treasury Department regulations issued pursuant to statutory authorization. The taxpayer contended that the regular corporation tax returns filed by it on Form 1120 were sufficient for

the determination of both the regular income tax provided by Title I and the additional personal holding company tax provided by Title IA and that inasmuch as the statutory period for assessment had expired since the filing of Form 1120, the Commissioner was precluded from assessing the personal holding company tax under Title IA. This Court held that Title IA imposed a tax separate from the regular tax imposed by Title I, that the Treasury Department regulation requiring two separate returns for the respective taxes was reasonable and valid and therefore that since no personal holding company tax return was filed the statute of limitations did not commence to run as against that tax.

In the instant case we have a comparable situation. Article 21 of the regulations under the gift tax law requires the filing "for information purposes only" of a "Donee's or Trustee's Information Return of Gifts." Such information return was not required by statute, but was prescribed by the Commissioner under the statutory authorization to prescribe needed rules and regulations. The notice provided for by Section 527(b) and (c) of the Act, and by Article 61 of the regulations thereto, is entirely separate and apart from the information return required by Article 21 of the regulations. Section 527(b) provides that the liability of a fiduciary for a transferee shall arise only "upon notice to the Commissioner," and Section 527(c) provides that such notice shall be given in accord with regulations prescribed by the Commissioner. Article 61 contains the prescribed regulation as to the form, content and filing of the notice of fiduciary relationship. Such notice is not "for information purposes only," but is a notice upon which substantial duties and liabilities arise.

We submit that the filing of the required "Information Return" pursuant to Article 21 for information purposes only, done without any intent to assume any of the powers, rights, duties and privileges of a transferee, and at a time when the regulation provided that no taxable gift had been made by the donor's relinquishment of his reserved power, is far different from the filing of a voluntary and optional notice of fiduciary relationship under Section 527(b) and (c) and Article 61, filed not merely for information purposes but as an assumption by the Trustee of all of the powers, rights, duties and privileges of the trust beneficiaries in respect to gift tax. The information return under Article 21 is as different from the notice of fiduciary relationship under Section 527(b) and (c) and Article 61 as is the regular corporate tax return, Form 1120, different from the personal holding company tax Form 1120H. Uniform application of the principle upon which this Court decided the *Lane-Wells* case therefore requires a holding here that the required notice to make operative Section 527(b) was not given and hence that petitioner is not liable as a fiduciary of a transferee.

The decision below conflicts in principle with the decision of the Circuit Court of Appeals for the Eighth Circuit in *Sanborn v. Helvering*, 108 F. 2d 311, and the decision of the Circuit Court of Appeals for the Ninth Circuit in *Tooley v. Commissioner*, 121 F. 2d 350. Both of those cases properly held that the requisite notice of termination of a fiduciary relationship under the similar fiduciary provisions of the income tax law is not satisfied by information contained in a petition to the Tax Court to the effect that a fiduciary relationship has terminated, and that to stop the continued obligation of a fiduciary the "specified notice" must be given by the fiduciary and can not be waived

by the Commissioner. The same notice requirements are made for initiating as for terminating the fiduciary's assumption of a transferee's duties. The decision below permits any kind of notice or information to the Commissioner to initiate the fiduciary's obligation while the two last cited cases permit the termination of that obligation only upon giving the specified notice. The statute is clear, the prescribed notice must be given in each instance. The decision of the court below is in conflict with the *Sanborn* and *Tooley* decisions and is in error.

7.

Petitioner is Not the Kind of Fiduciary to Which Section 527(b) Applies.

By Section 526(a) the liability at law or in equity of a transferee is made subject to the summary collection procedure. Thereby a transferee acquires all of the statutory rights and duties placed on the donor and donee under that procedure. In addition, a transferee has many rights and duties under other statutory law, under the common law or under equitable principles if liability in an action at law or by a suit in equity is asserted against him.

Only one type of fiduciary is so legally empowered and equipped as to be legally and practicably able to assume such powers, rights, duties and privileges of a transferee, namely, a fiduciary having plenary powers to act for and bind the transferee and possessing the transferee's property. The administrator or executor of a decedent's estate, the guardian or committee of a minor or an incompetent, a receiver of an insolvent or a trustee in bankruptcy, a trustee of property in a trust created by a transferee, and similar fiduciaries who are legally empowered to represent

and act for the transferee and who have his estate in their hands, are the only kind of fiduciaries who are fitted to assume all of the powers, rights, duties and privileges of a transferee.

Other fiduciaries, with narrowly limited powers, such as petitioner, cannot be brought within the purview of Section 527(b) without creating legal conflicts and reaching absurd and unintended results. The instant case is an excellent illustration of the utterly impossible situation which would result if Section 527(b) is applied to petitioner.

Here the trust consists only of insurance policies on the donor's life and petitioner as trustee is acting under a trust agreement which expressly states that the trustee is "to hold said policies without any obligation of any nature in respect thereto other than the safekeeping thereof until they shall mature". Petitioner is for the time being only a custodian of the policies. Its powers and rights as trustee are only coextensive with its duties. Petitioner is therefore not legally empowered or competent under the trust agreement to assume all of the powers, rights, duties and privileges of the trust beneficiaries in respect to their liability for the donor's gift tax. There is nothing in the trust from which petitioner can receive compensation for its services as custodian, much less be paid for undertaking performance of the rights and duties of the beneficiaries in respect to gift tax or from which to pay the considerable expense of exercising and discharging such rights and duties. There is no basis or measure of petitioner's accountability to the beneficiaries for undertaking to exercise and discharge their rights and duties in respect to liability for gift tax. The beneficiaries are entitled to exercise their rights and to discharge their duties in such man-

ner as they shall determine. They are entitled to pay an asserted tax liability or to resist it, as they choose. They have rights and duties almost without end which they are entitled to act on in their own way and which the trustee would be called to act on as the trustee might determine. For example, in resisting a tax determined by respondent, the tax may be paid and action for recovery may be brought in a federal district court, or appeal from the determination, without payment, may be taken to the Tax Court. The trustee and the beneficiaries could disagree as to which procedure to take, or be at odds as to the manner of exercising or discharging the many other rights and duties of the beneficiaries.

Petitioner, as trustee-custodian of the donor's insurance policies, does not have in its hands the "estate" of any transferee and is without power to realize on the policies to meet any gift tax liability that may be owing by the beneficiaries as donee-transferees. If petitioner should be liable and could surrender the policies for their cash value, whose estate could it charge for the disbursement? How could it account to Indiana University which is an exempt donee and is entitled to have its one-third of the full insurance proceeds held perpetually for its benefit undiminished by any gift tax? These complications cannot be ignored. They exemplify the necessity for applying Section 527(b) only to a fiduciary invested with plenary powers to act for and bind the transferee and endowed with the transferee's property or estate from which to pay the transferee's tax liabilities.

If Congress had intended to place on this limited kind of fiduciary the mandatory obligation of assuming all of the powers, rights, duties and privileges of a transferee

it would at least have provided that all of the persons interested in the asserted tax liability and entitled to participate in acceding to or resisting the same should be made parties to the collection proceeding.

Therefore, the fair and reasonable construction to be placed on Section 527(b) is that it applies only to fiduciaries having the plenary power to represent the transferees. Such construction is supported by the reference to the "estate" of the transferee as the source from which the tax is to be paid. The word "estate" is significant in that it is in perfect correlation with the category of fiduciaries having plenary power to act for and bind the persons or estate they represent. The title to the Section, "Fiduciary of Transferee", confirms that construction. "Fiduciary of Transferee" means transferee's fiduciary, that is, a fiduciary succeeding to or appointed by a transferee and receiving property of or from a transferee. Lastly, Article 61 itself confirms that construction by its requirement that with the notice of fiduciary relationship the fiduciary must file satisfactory evidence of the authority of the fiduciary to act for the transferee.

CONCLUSION.

The case at bar presents new questions, serious questions as to the practical operation of the federal gift tax law which is of recent enactment and has not been the subject of any extensive review by the courts. Because of the great number of gifts made through the trust medium the questions are of widespread importance, both to the many fiduciaries involved and to the government in the collection of revenue. Since November, 1942, the Tax Court

has handed down decisions in no less than thirteen cases on the questions here presented or related questions.[2]

The importance of the questions is multiplied many fold by the fact that the transferee provisions of the gift tax law were taken verbatim from the income and estate tax laws. Any decision on the instant questions under the gift tax law is in effect a determination of the meaning and effect of the similar provisions contained in the income and estate tax laws.

On such questions of general interest and importance the Court below has fallen into grevious error. Review by this Court is not only fully warranted but direly needed.

Respectfully submitted,

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[2] E. N. Moore, 1 T. C. 14; Fletcher Trust Co., 1 T. C. 798; A. M. Myer, 2 T. C. —; M. E. Baur, 2 T. C. —; M. A. C. Riter, 3 T. C. —; and unreported memorandum opinions in the cases of S. R. Baer, C. A. E. Goodhart, R. Perkins, R. W. Smyth Trust, W. Watkins, Fidelity Trust Co., Margaret J. Smith Trusts and Nashville Trust Co.